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STATE OF INDIANA 03 APR 14 AM 9 IN THE LAKE CIRCUIT/SUPERIOR COURT

) SS:  
COUNTY OF LAKE ANNA N. ANTON CAUSE NO. 45CC010304PL00082  
CLERK LAKE CIRCUIT COURT

STATE OF INDIANA, )  
)  
Plaintiff, )  
)  
v. )  
)  
MIKE PRICE, )  
individually and doing business as, )  
MIKE'S GARAGE DOOR SERVICE )  
)  
Defendant. )

CERTIFIED MAIL/

POST MARKED 04-11-03

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.

2. The Defendant, Mike Price, individually and doing business as Mike's Garage Door Service, is an individual engaged in the home improvement business, with a principle place of business at 3896 West 74<sup>th</sup> Court, Merrillville, Indiana 46410, and transacts business with Indiana consumers.

## FACTS

3. Since at least January 12, 2002, the Defendant has entered into home improvement contracts with Indiana consumers.

### **A. Allegation Regarding Daniel and Julie Buksa**

4. On or around January 12, 2002, Defendant entered into a contract with Daniel and Julie Buksa ("the Buksas") of Highland, Indiana, wherein Defendant agreed to remove and replace a garage door and opener at a price of Three-Hundred Dollars (\$300.00). A true and accurate copy of the Defendant's contract with the Buksas is attached and incorporated as Exhibit "A."

5. Based on the Defendant's representations that the money was necessary for the purchase of materials to perform the contracted work, the Buksas paid the Defendant Three Hundred Dollars (\$300.00).

6. Defendant failed to provide the consumers with a written home improvement contract that contained:

- a. any time limitations on the consumer's acceptance of the home improvement contract;
- b. a reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

- c. the approximate starting and completion dates of the home improvements;
- d. a statement of any contingencies that would materially change the approximate completion date; and
- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

7. At contract signing, Defendant represented to the Buksas that the work would be completed within a reasonable period of time.

8. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract.

**B. Allegations Regarding David Zona**

9. On or around May 11, 2002, Defendant entered into a contract with David Zona ("Zona") of Crown Point, Indiana, wherein Defendant agreed to remove and replace two garage doors and install a garage door opener at a price of Seven-Hundred Dollars (\$700.00). A true and accurate copy of the Defendant's contract with Zona is attached and incorporated by reference as Exhibit "B."

10. Based on the Defendant's representations that the money was necessary for the purchase of materials for use on Zona's home, Zona paid Five Hundred Dollars (\$500.00) down under the contract to the Defendant.

11. The Defendant failed to provide the consumer with a written home improvement contract that contained:

- a. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. any time limitation on the consumer's acceptance of the home improvement contract;
- c. a reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- d. a statement of any contingencies that would materially change the approximate completion date; and
- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

12. At contract signing, Defendant represented to Zona that the work would be completed within a reasonable period of time.

13. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract.

**C. Allegations Regarding Joseph Humphrey**

14. On or around May 15, 2002, the Defendant entered into a contract with Joseph Humphrey ("Humphrey") of Hammond, Indiana wherein Defendant agreed to install a garage door opener and repair the garage door at a price of Two-Hundred-and-Fifty Dollars (\$250.00). A true and accurate copy of the Defendant's contract with the consumer is attached and incorporated by reference as Exhibit "C."

15. Based on the Defendant's representations that the money was necessary for the purchase of materials for use on Humphrey's home, Humphrey paid the Defendant Two Hundred and Fifty Dollars (\$250.00).

16. The Defendant failed to provide the consumer with a written home improvement contract that contained:

- a. any time limitations on the consumer's acceptance of the home improvement contract;
- b. a reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- c. the approximate starting and completion dates of the home improvements;
- d. a statement of any contingencies that would materially change the approximate completion date; and

- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

17. At contract signing, Defendant represented to Humphrey that the work would be completed within a reasonable period of time.

18. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract.

#### **COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

19. The services described in paragraphs 4, 9, and 14 are "home improvements" as defined by Ind. Code §24-5-11-3.

20. The transactions referred to in paragraphs 4, 9, and 14 are "home improvement contracts" as defined by Ind. Code §24-5-11-4.

21. The Defendant is a "supplier" as defined by Ind. Code §24-5-11-6.

22. By failing to provide the consumers with a completed home improvement contract, containing the information referred to in paragraphs 6, 11, and 16, the Defendant violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10.

23. Defendant's violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 6, 11, and 16, constitute a deceptive act and subjects Defendant to the remedies and penalties under Ind. Code §24-5-0.5-1, *et seq.*

#### **COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

24. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. The transactions referred to in paragraphs 4, 9, and 14 are “consumer transactions” as defined by Ind. Code §24-5-0.5-2(a)(1).

26. The Defendant is a “supplier” as defined by Ind. Code §24-5-0.5-2(a)(3).

27. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph 23 above constitute deceptive acts in accordance with Ind. Code §24-5-11-14.

28. The Defendant’s representations to the Buksas, Zona, and Humphrey that the work would be performed, as referred to in paragraph 5, 10, and 15, when the Defendant knew or reasonably should have known that no such benefit or work would be performed, is a violation of Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1).

29. The Defendant’s representation to the Buksas, Zona, and Humphrey that he would provide home improvement services to their homes within a reasonable period of time, when he knew or reasonably should have known that he would not, as referred to in paragraphs 7, 12, and 17, is a violation of Ind. Code §24-5-0.5-3(a)(10).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS  
OF THE DECEPTIVE CONSUMER SALES ACT**

30. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 29 above.

31. The misrepresentations and deceptive acts set forth in paragraphs 5, 7, 10, 12, 15, and 17 were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Mike Price, individually and doing business as Mike’s Garage Door Service, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract



with a legible printed or typed version of that person's name placed directly after or below the signature;

- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- d. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or should reasonably know it does not have; and
- e. representing, expressly or by implication, that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know he cannot;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Mike Price, individually and doing business as Mike's Garage Door Service, for the following relief:

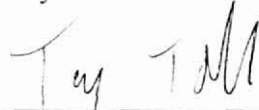
- a. cancellation of the Defendant's contracts with the Buksas, Zona, and Humphrey, pursuant to Ind. Code §24-5-0.5-4(d);

- b. consumer restitution in an amount to be determined at trial, for money unlawfully received from the Buksas, Zona, and Humphrey, pursuant to Ind. Code §24-5-0.5-4(c)(2);
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. All other just and proper relief.

Respectfully submitted,

STEVE CARTER  
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By:

  
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